

# **Exhibit D**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

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MONIQUE MURRAY, )  
BENNETH EKWEGBALU, )  
ERIK GIORDANO, )  
ASHLEY HAMILTON, )  
VALENTYNA MASYK, )  
JASMINE MCNEILL, )  
ROSEDI MORALES, )  
WAYNE NEAL, )  
EMMETT SEALEY, ) No. 16-cv-8072 (PKC)  
PAUL SINGH, and )  
ALLEN STEVENS, ) (JURY TRIAL DEMANDED)  
Plaintiffs, )  
v. )  
CITY OF NEW YORK, NEW YORK, )  
Defendant. )  
\_\_\_\_\_  
)

**DECLARATION OF EMMETT SEALEY**

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the following is true and correct:

1. I am currently employed by the New York City Department of Homeless Services (“DHS”) in the position of Community Assistant. I have held this position since my date of hire in June 2011.
2. While working as a Community Assistant, I have been assigned to the DHS facility located at 501 New Lots Ave., Brooklyn, NY 11207.
3. Generally, my job duties as a Community Assistant involve serving New York City’s homeless population. Specifically, my job duties include but are not limited to custodial services and support at homeless shelters, preparing and serving meals to clients, cleaning the

shelters, providing clean bedding to clients, providing toiletries and other necessities to clients, enforcing rules at the shelters, monitoring curfew, attending to bed sign-in for clients and determining whether there are additional beds available, and securing clients' belongings.

4. Based on my knowledge and experience, while the specific daily tasks or cases assigned to a Community Assistant may vary slightly from person to person, the job duties of all Community Assistants employed by DHS are the same as those described in Paragraph 3 above.

5. While working for DHS in the position of Community Assistant, my assigned schedule has been 4 pm to 12 am, Monday through Friday. This shift includes a 30 minute, unpaid meal period.

6. I often perform work activities, including but not limited to those described in Paragraph 3, before my scheduled shift, after my scheduled shift, and during my 30 minute unpaid meal periods. On average, I perform work activities during my unpaid meal period approximately 3 days per week. As a result, I routinely work over 40 hours in a workweek but I am not properly compensated for this time.

7. Based on my knowledge and experience, Community Assistants working for DHS have similar schedules and work similar hours.

8. When I perform work activities before the start of my shift, after the end of my scheduled shift, and during my one hour unpaid meal period, I do so because I have a large volume of work that must be completed, including but not limited to tasks which are time-sensitive. I cannot complete all of my assigned work during my scheduled 7.5 hour shift.

9. Based on my experience and observation, all Community Assistants employed by DHS perform similar pre-shift and/or post-shift tasks, including but not limited to the tasks

described in Paragraph 3, after logging into CityTime but before their paid shift start time and/or after their paid shift time ends but before they log out of CityTime, without compensation.

10. My supervisors and managers know that other Community Assistants and I regularly perform the unpaid pre-shift and/or post-shift tasks described in Paragraph 3 because this time is recorded in CityTime as “Uncompensated Hours” or “Noncompensable Hours.” Additionally, my supervisors and managers see me and my colleagues performing this work outside of our scheduled shifts.

11. While my scheduled shift includes a 30 minute unpaid duty free meal period, I do not take a full, duty free meal break approximately 2 times per week. When working through my unpaid meal period, I continue performing my regular job duties, including but not limited to those tasks described in Paragraph 3.

12. My supervisors and managers know that other Community Associates and I regularly perform work activities, including but not limited to those tasks described in Paragraph 3, during our one hour unpaid meal period, because they see me at performing work activities and servicing clients during my scheduled meal period.

13. Based on my experience and observations, all Community Assistants employed by DHS regularly perform tasks, including but not limited to those tasks described in Paragraph 3, during their scheduled 30 minute, unpaid meal period.

14. Based on my knowledge and experience, the City has a policy and practice by which it fails to pay employees at DHS, including but not limited to Community Assistants, for all hours of work in excess of 40 in a workweek. The City maintains this practice despite the fact that most of my work time is tracked on the City’s timekeeping system.

15. I often receive compensatory time in lieu of cash for overtime which the City has designated as “approved” and “voluntary.” However, based on my knowledge and experience, the City has a policy and practice of paying DHS employees, including but not limited to Community Assistants, compensatory time for hours worked in excess of 40 in a workweek at a rate of one hour of compensatory time for each hour of “approved” and “voluntary” overtime work, or a “straight time” rate.

16. Employees of DHS, including but not limited to Community Assistants, are eligible to receive and did receive payments in addition to my base salary, including night shift differentials and meal allowances. These pay enhancements are often earned during weeks in which I and other Community Assistants work in excess of 40 hours in a workweek. Based on my knowledge and experience, the City has a policy and practice of excluding these additional payments when calculating the regular rate at which overtime is paid. Instead, any overtime payment is calculated using only the hourly rate based on my base salary.

17. When I received overtime payments in cash, the City often delayed the payment of overtime beyond the next pay period after I worked the overtime. Based on my knowledge and experience, the City has a policy and practice that is applicable to all DHS employees, including but not limited to Community Assistants, by which it regularly delays the payment of overtime.

Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that the following is true and correct:

Date: 9/6/16

Ernest Sealy